

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Philip G. Reinhard	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	01 C 50206	DATE	3/27/2002
CASE TITLE	U.S.A. vs. GUILLERMO MAYA-DOMINGUEZ		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:**DOCKET ENTRY:**

- (1) Filed motion of [use listing in "Motion" box above.]
- (2) Brief in support of motion due _____.
- (3) Answer brief to motion due _____. Reply to answer brief due _____.
- (4) Ruling/Hearing on _____ set for _____ at _____.
- (5) Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) Trial[set for/re-set for] on _____ at _____.
- (8) [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
 FRCP4(m) General Rule 21 FRCP41(a)(1) FRCP41(a)(2).
- (10) [Other docket entry] For the reasons stated on the reverse Memorandum Opinion and Order, the court denies a certificate of appealability.

- (11) [For further detail see order on the reverse side of the original minute order.]

<input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	No notices required, advised in open court. No notices required. Notices mailed by judge's staff. Notified counsel by telephone. Docketing to mail notices. Mail AO 450 form. Copy to judge/magistrate judge.	U.S. DISTRICT COURT CLERK MAR 28 2002 date docketed FILED - WD Date/time received in central Clerk's Office <i>DW</i> mailing deputy initials	Document Number  
/SEC6	courtroom deputy's initials		

(Reserved for use by the Court)

ORDER

Due to defendant Guillermo Maya-Dominguez's initial failure to file a brief defining the issues in his motion pursuant to 28 U.S.C. § 2255 this court summarily dismissed his motion on July 13, 2001 as not timely filed. On July 30, 2001 defendant filed a motion for reconsideration which was denied on August 2, 2001. On October 15, 2001 defendant filed a notice of appeal and application for a certificate of appealability. In the application for the certificate defendant states the three issues he intends to raise in the appeal: (1) whether his original motion was timely filed; (2) whether Apprendi v. New Jersey, 530 U.S. 466 (2000) is retroactive to his case; and (3) if Apprendi is retroactive, whether it applies to his sentence of imprisonment of 168 months. Even assuming his § 2255 motion was timely and the court improvidently summarily dismissed it for this reason (though his notice of appeal may be untimely), the decision in Apprendi does not apply as defendant was not sentenced above the 40-year statutory maximum sentence for conspiracy to possess with intent to distribute 650 kilos of marijuana as charged under 21 U.S.C. § 846. Accordingly, no substantial showing of the denial of a constitutional right is made and the court denies a certificate of appealability.